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ACCESS RULING

In the matter of the Virginia School for the Deaf and Blind
Ruling Number 2025-5898
June 20, 2025

On May 21, 2025, the grievant submitted a Dismissal Grievance Form to the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM). The agency has asserted that the grievant lacks access to the grievance procedure because the grievant was a probationary employee at the time of her separation and also voluntarily resigned.

FACTS

The grievant began her position at the agency on May 10, 2024, subject to a one-year probationary period. On May 9, 2025, one day prior to the end of the probationary period, agency management informed the grievant they intended to terminate her employment as of that day, based on investigative findings regarding her interactions with coworkers. However, it appears that management agreed to accept the grievant's voluntary resignation instead if she submitted a letter reflecting resignation that same day. The grievant did in fact submit a letter indicating her resignation effective May 9, 2025.

DISCUSSION

EDR first considers the issue of whether the grievant was in her probationary period at the time of separation. DHRM Policy 1.45, *Probationary Period*, states that employees "who begin either original employment or re-employment in classified positions must serve 12-month probationary periods effective from the dates of their employment."¹ The General Assembly has further provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.² Employees who have not completed their probationary period do not have access to the grievance procedure.³

Here, there is no dispute that the grievant began her employment with the agency on May 10, 2024.. On May 9, 2025, the last day of her probationary period, the agency apparently

¹ DHRM Policy 1.45, *Probationary Period*, at 1.

² Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

³ E.g., EDR Ruling No. 2020-5017; EDR Ruling No. 2019-4920.

expressed its intention to terminate the grievant's employment that day. Instead, the grievant resigned. Therefore, the grievant had not completed her probationary period at the time of her separation. On that basis, she does not have access to the grievance procedure.

EDR notes the grievant's argument that her resignation was "forced," not voluntary. The General Assembly has provided that "[u]nless exempted by law, all nonprobationary state employees shall be covered by the grievance procedure . . ."⁴ Upon the effective date of a voluntary resignation from state service, a person is no longer a state employee. Thus, to have access to the grievance procedure, the employee "[m]ust not have voluntarily concluded their employment with the Commonwealth prior to initiating the grievance."⁵ EDR has long held that once an employee's voluntary resignation becomes effective, they are not covered by the grievance procedure and accordingly may not initiate a grievance.⁶

EDR is the finder of fact on questions of access.⁷ The determination of whether a resignation is voluntary is based on an employee's ability to exercise a free and informed choice in making a decision to resign. Generally, the voluntariness of an employee's resignation is presumed.⁸ A resignation may be viewed as involuntary only where it was (1) "obtained by the employer's misrepresentation or deception" or (2) "forced by the employer's duress or coercion."⁹ In this case, the grievant has not alleged that her resignation was procured by misrepresentation or deception. As such, this ruling will address only the issue of duress or coercion.

A resignation can be viewed as forced by the employer's duress or coercion if "it appears that the employer's conduct . . . effectively deprived the employee of free choice in the matter."¹⁰ Factors to consider are "(1) whether the employee was given some alternative to resignation; (2) whether the employee understood the nature of the choice [she] was given; (3) whether the employee was given a reasonable time in which to choose; and (4) whether [she] was permitted to select the effective date of resignation."¹¹

Cases that ordinarily implicate this analysis involve situations where the employer presents the employee with the options that they can resign or be dismissed, which is what occurred in this case. "[W]here an employee is faced merely with the unpleasant alternatives of resigning or being subject to removal for cause, such limited choices do not make the resulting resignation an involuntary act."¹² Here, although the grievant has expressed that she was extremely surprised by the agency's characterization of her performance, did not agree with it, and would not have wanted her employment to end, it appears that the grievant did have the opportunity to choose how her separation would be reflected – *i.e.* termination versus resignation. Therefore, considering the first

⁴ Va. Code § 2.2-3001(A).

⁵ *Grievance Procedure Manual* § 2.3.

⁶ *E.g.*, EDR Ruling No. 2005-1043.

⁷ *See* Va. Code § 2.2-1202.1(5); *see also* *Grievance Procedure Manual* § 2.3.

⁸ *See* *Rosario-Fabregas v. Merit Sys. Prot. Bd.*, 833 F.3d 1342, 1346 (Fed. Cir. 2016).

⁹ *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 167, 174 (4th Cir. 1988).

¹⁰ *Id.*

¹¹ *Benjamin v. Sparks*, 986 F.3d 332, 349 (4th Cir. 2021) (citing *Stone*, 855 F.2d at 174) (noting that no single one of the four recognized factors is dispositive of voluntariness); *see, e.g.*, EDR Ruling No. 2013-3564.

¹² *Schultz v. U.S. Navy*, 810 F.2d 1133, 1136 (Fed. Cir. 1987).

Stone factor, the alternatives apparently available to the grievant in this case do not support a claim that she tendered her resignation only under duress.¹³

As to whether the grievant understood her choice and its consequences, had time to consider her options, or was permitted to select the effective date of her separation, EDR is not persuaded that the facts support a conclusion that her resignation was procured through duress or coercion. The grievant has not asserted that she did not understand her choice or its consequences. To the contrary, she appears to have posed certain questions about the impact of resigning versus being dismissed and received accurate answers from the agency. The record does reflect that the grievant was given very limited time to choose between resignation and termination and was not able to select the date of her separation. While it thus appears that the grievant made her decision under time pressure, we cannot say that the totality of these facts undermine the presumption of voluntariness. There is no indication that the grievant sought and was denied additional time to make her decision. Further, the grievant has asserted that if she were given the same options again today, she would still choose to resign rather than be dismissed by the agency.¹⁴ Accordingly, we conclude that the grievant's separation from employment was based on a voluntary resignation, and thus she would not have access to the grievance procedure even if she had concluded her probationary period.

This ruling does not make any determinations as to whether the grievant's separation itself was consistent with law. This ruling also does not address whether any legal or other remedy may be available to the grievant. This ruling only determines that she is ineligible to pursue her claims through the state employee grievance procedure. Her dismissal grievance will not proceed to a hearing, and EDR will close its file.

EDR's access rulings are final and nonappealable.¹⁵

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¹³ See *Stone*, 855 F.2d at 174.

¹⁴ When EDR determines that a resignation was not voluntary, the remedy typically is to allow the grievant essentially to make their choice again. See, e.g., EDR Ruling No. 2023-5431. Here, even we concluded the grievant's resignation was not voluntary, it appears that her separation date during her probation period would not change regardless of her choice. Accordingly, our ultimate conclusion that the grievant lacks access to the grievance procedure would remain the same.

¹⁵ Va. Code § 2.2-1202.1(5).